The plaintiff to have 5% interest from 29th January 1937 on amount recovered. The parties to be at liberty to adjust the figures re freight and the five months time-element figure if necessary. Rupees to be converted to Straits Settlements currency at rate given in Statement of Claim.

The plaintiff to have costs of suit on lower scale.

Judgment accordingly.

Solicitors for the Plaintiff—

Chan & Eber.

Solicitors for the Defendants—

Donaldson & Burkinshaw.

[APPELLATE CIVIL JURISDICTION]

McELWAINE, C.J.

January 15, 1939.

BAHADAR SINGH.....Plaintiff (Appellant)

vs.

ALBERT TAN ALIAS TAN LENG YAM.... Defendant (Respondent)

[MALACCA CIVIL DISTRICT COURT APPEAL No. 3 of 1938]

Credibility of witnesses—importation of considerations from outside the case.

It is no sufficient reason for disbelieving a money-lender for a District Judge to say that he has had experience of other money-lenders who have not been truthful witnesses. A Judge is not entitled to assume that a man is a liar just because he is a money-lender.

DISTRICT COURT APPEAL.

S. C. Goho for the appellant.

Paulusz for respondent.

Cur. Ad. Vult.

McELWAINE, C.J.—The appellant who is a money lender sued the defendant for $270/- being $250/- alleged to be due as principal and $20/- as arrears of interest on a promissory note.

The defence was that the principal was not truly stated in the note as required by the Money Lenders Ordinance (Chapter 218) section 4 and the learned District Judge accepting the defendant's evidence that only $100/- was advanced dismissed the claim with costs.

The appellant appeals on two grounds, first that the learned District Judge in finding that only $100/- had been advanced improperly took into consideration matters extraneous to the case: second that on his finding the District Judge should have given judgment for the $100/- which he found had been advanced.

The appeal was argued on the first ground only, the second ground being reserved for a full Court in the event of the appeal on the first ground failing.

As the making of the note for $250/- with interest at the rate of 24% per annum was admitted the onus was on the defendant to satisfy the Court that he did not receive the principal sum named in the note the receipt of which was expressly acknowledged in a memorandum signed by the defendant in which he also acknowledged the receipt of a copy of the promissory note.

The defendant and Toh Seng Huat gave evidence for the defence and the plaintiff gave evidence on his own behalf. The District Judge accepted the evidence of the defendant and his witness, but he does not appear to have been greatly impressed by the defendant of whom he said "The defendant is a spendthrift youth and perhaps not a very reliable witness but on this occasion he seems to me to be telling the truth." Having said that Toh Seng Huat was a very reliable witness the learned District Judge said that even apart from Toh Seng Huat's evidence he would have accepted the evidence of the defendant and he did not believe the plaintiff.

From the grounds of judgment it appears that he accepted the defendant's story and rejected the plaintiff's for three reasons.

1. The defendant (who never said until 2nd August that he had not received the $250/- on 3rd January) had not been anxious to come into Court at all, but had been persuaded to do so by his relatives. How this fact strengthens the defendant's case I am at a loss to see. It is equally open to the construction that he was unwilling to commit perjury and was persuaded to do so by his relatives who were trying to settle his debts.
2. That the plaintiff had admitted to Toh Seng Huat that he had only lent $100/- though Toh Seng Huat admitted that money lenders do not usually admit having lent less than the note shows. The evidence as to this alleged admission is most contradictory.
   In the middle of May Toh Seng Huat called a meeting of the defendant's creditors of whom there were twenty "for $3,000/- with interest rapidly piling up." The plaintiff was asked to accept a smaller sum than what he alleged was due (i.e. $250/- and interest on the note sued on in this case, and $300/- on another note) but he refused to agree. The plaintiff says the offer he rejected was $350/-.
   The defendant swore that the plaintiff wanted the two notes settled for $300/-. Then he swore "formerly Toh Seng Huat offered $300/- but plaintiff wanted $400/-. I offered plaintiff

$350/- but he refused." There is nothing in the defendant's evidence to indicate that the plaintiff ever admitted having lent less than $250/-.

If the plaintiff was willing to settle for $300/- it is incomprehensible why he should refuse $350/-. When we come to Toh Seng Huat's evidence he denies having offered $300/- to the plaintiff though he says that the plaintiff wanted $300/- for the two notes. This same witness also says "I offered $350/- because I wanted to avoid coming to Court." This last statement corroborates the plaintiff.

3. The District Judge was influenced by considerations altogether outside this case. He says "Judging the evidence in the case in the light of considerable experience of litigants in this country I cannot believe that the plaintiff paid $250/- cash to the defendant." This is tantamount to saying that no moneylender, even after the passing of the Moneylenders Ordinance, lends the amount named in the promissory note. Because there may be many cases in which moneylenders have not lent the amount they say they lent is no reason for disbelieving the plaintiff. There is no suggestion that this particular moneylender was known to the District Judge to lend less than was named in the note, or that previous experience of him as a witness taught that he was unworthy of credibility.

"A Judge" says the learned District Judge, "may not rely on his knowledge of particular facts but he is entitled to use his general knowledge and experience, as in determining the value of evidence, and to apply them to the facts in dispute. (*Woodroffe & Amir Ali* on Evidence 7th Ed. p.115)."

He also quoted a passage from the advice of the Judicial Committee in *Tan Soo Hock* v. *Tan Jiak Choo* set out in of *Braddell's* Law of the Straits Settlements at p.434-5.

But I see nothing in these passages to justify the finding that the plaintiff did not lend the $250/- just because the District Judge has had experience of other moneylenders who do not comply with the law. A Judge's experience and knowledpe of the mentality of different races is of great value in assisting him to understand their evidence, to allow for exaggeration, to allow for evidence being an inference from facts rather than evidence of what is within the witness's own knowledge. It may even so far as to justify suspicion of the plaintiff, but so far as I am aware the adage "all men are liars" is not part of the law of the Colony even if it is confined to money lenders.

The greatest weight is to be attached to the opinion of a tribunal which has seen and heard witnesses and had an opportunity of noting their demeanour, but in this case it is clear that the defendant was believed partly on account of an alleged admission by the plaintiff of which there is no evidence at all apart from Toh Seng Huat's evidence and partly on the proposition which the District Judge adopted as a general principle that no money lender advances the amount named in the note.

The District Judge has taken into consideration matters as corroboration of the defendant which in my opinion he ought not to have taken into consideration.

It appears to me that the negotiations for settlement with creditors in which an offer and acceptance of smaller sums than is due may well be discussed may have been taken as an admission which it certainly was not. If at such a meeting the plaintiff offered to accept $300, $350 or $400 that would be no evidence that smaller sums had been advanced than is now claimed.

The difficulty is whether apart from these factors the defendant should have been believed when he said he only got $100/-, when this evidence is countered by the plaintiff's evidence and the defendant's written acknowledgment that he had received the full $250/-.

I have not had the advantage of seeing either of these parties give their evidence, but it seems to me that the defendant's evidence was accepted not on its own merits but because of so many matters mistakenly thought to support it—his reluctance to come into Court, the alleged admission which depended entirely on what appears to me to be the very unconvincing evidence of Toh Seng Huat, and the proposition that no money lender advances the full amount, and that without these bolstering factors the District Judge would not have found that this not very reliable witness had discharged the onus which was upon him.

For these reasons I allow the appeal.

Solicitors for Appellant—*Roger & Sons.*

Solicitors for the Respondent—*Zehnder Bros.*